

SERVICE DATE – MARCH 20, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073X

ALABAMA & FLORIDA RAILWAY CO., INC.—ABANDONMENT EXEMPTION—IN
GENEVA, COFFEE AND COVINGTON COUNTIES, Ala.

Decided: March 19, 2012

This decision denies a request to extend the public use condition.

Alabama & Florida Railway Co., Inc. (A&F) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad (which constitutes A&F's entire rail system) between milepost 581.3 at Andalusia, and milepost 624.2 at Geneva, a distance of 42.9 miles, in Geneva, Coffee and Covington Counties, Ala. Notice of the exemption was served and published in the Federal Register on August 9, 2011 (76 Fed. Reg. 48,941-42). The exemption became effective on September 8, 2011.

By decision served on September 7, 2011 (September 7 decision), the proceeding was reopened and the exemption was made subject to a 180-day public use condition under 49 U.S.C. § 10905 to permit the Alabama Trails Commission (ATC), a government agency interested in the development of recreational trails, or any other interested person to negotiate for acquisition of the right-of-way for public use.¹ The public use condition expired on March 6, 2012. By letter filed on March 5, 2012, however, ATC requests to extend the public use condition for an additional 180 days.

ATC's request will be denied. It is well-settled that 180 days is the maximum period permitted by statute for a public use condition and that the condition may not be extended beyond that time. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28(b); Rail Abans.—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-98 (1992). Thus, there remain no legal or regulatory barriers to A&F's consummation of its abandonment authority. Although the public use condition may not be extended, CSX Transportation, Inc., the line's lessor, may voluntarily choose to negotiate with ATC outside of the Board's jurisdiction for use of the right-of-way as a trail once A&F consummates its abandonment.²

¹ The exemption also was made subject to a historic preservation condition under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. The Section 106 condition later was removed by decision served on November 15, 2011.

² ATC previously had sought a Notice of Interim Trail Use (NITU) to permit negotiation for acquisition of the line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). Although CSXT agreed to trail use negotiations, A&F did not. Because

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. ATC's request to extend the public use condition is denied.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

trail use negotiations under the Trails Act are voluntary and A&F, the carrier seeking abandonment (and thus the appropriate carrier to negotiate for trail use), did not agree to negotiate, the Board denied the NITU request by decision served September 7, 2011.